

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 430 of 1989

(CRIMINAL APPEAL NO.359 OF 1989
FILED BY THE SAME
APPELLANT THROUGH JAIL)

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHYAMLAL V VARMA

Versus

STATE OF GUJARAT

Appearance:

MR DR BHATT for Petitioner

MR D.N.PATEL ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

Date of decision: 20/07/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Criminal Appeal No. 430/89 filed by the
appellant through his Counsel, came to be admitted by a
Division Bench consisting of Hon'ble Mr.Justice N.B.Patel

and Hon'ble Mr. Justice V.H. Bhairavia on 18.8.1989 as per the record. It appears that in the meantime, the appellant had also sent appeal through jail being Criminal Appeal No. 359 of 1989 and that appeal came up for admission hearing separately before Hon'ble Mr. Justice P.M. Chauhan and Hon'ble Mr. Justice V.H. Bhairavia and was admitted on 22.11.1989. In that matter Mr. K.G. Sheth, learned Counsel was appointed since it was a jail appeal. When the appeal filed through the learned Counsel who appears for the appellant was already admitted on 18.8.1989, it is strange that the office should have placed the jail appeal for admission again on 22.11.1989.

We have heard the learned Counsel who has appeared in Criminal Appeal No. 430/89 for the appellant, though we also appreciate the efforts put up by the learned Counsel Mr. K.G. Sheth, who appeared as an appointed counsel in the jail appeal filed by the appellant. Though separate appeals are filed, they are treated as one appeal and we are passing this judgement and order in Criminal Appeal No. 430/89, which was filed by the appellant through his counsel.

2. The appellant has challenged his conviction and sentence of life term for the offence under Section 302 of the IPC and his conviction under Section 201 of the IPC for which no separate sentence has been awarded, under the judgement and order dated 31.5.1989 of the learned Additional Sessions Judge, Valsad, in Sessions Case No. 84 of 1987. The prosecution version is that the appellant had, somewhere between 29th August, 1987 at 11.00 P.M and 1st September, 1987, caused the death of Ramila by strangulating her and had thrown her dead-body in the water tub on the terrace of Bhruguraj Industries in village Antaliya of Tal. Gandevi, thereby committing offences under Sections 302 and 201 of the Indian Penal Code. According to the prosecution Ramila used to stay with the appellant and was insisting that he should divorce his wife Saraswati and marry her. On 29th August, 1989, both of them had gone to the house of her brother Ramesh Laxman, who was serving as a Watchman in the factory of R. Thakorji Fabricators situated in the same compound and was residing there. The appellant Shyamlal and Ramila used to off and on come to the house of her brother - Ramesh Laxman. On 29th August, 1987, they had visited his house and after taking meals had gone out and returned around 7.00 P.M. Ramesh and his wife slept in their hut while Shyamlal and Ramila slept out nearby on an 'otla'. Thereafter, there was some commotion and Ramesh saw that Shyamlal had given two

slaps to his sister. He therefore, told them not to quarrel and go away from that place. This happened between 10 P.M - 11 P.M. Thereafter, on 1st September, 1987, Ramesh Laxman, as per his duty, had gone on the terrace to clean the water tanks and he noted that there was a foul smell coming and then he saw that in one of the smaller tanks, his sister Ramila's dead-body was lying decomposed. He thereafter filed the complaint Ex.10 in which he had named the appellant as the accused. According to the prosecution, the said complaint was filed around 10'0 Clock in the morning on 1.9.1987 at Bilimora Police Station. The accused had on his own surrendered on 1.9.1987 at Mahidarpura Police Station in Surat around 12.30 P.M as per the Station diary entry Ex.7 and was arrested at 1.15 P.M at that Police Station, when on enquiry it was known that offences were registered against the appellant under Sections 302 and 201 of the IPC at Bilimora Police Station.

3. Before the Court, the defence of the appellant was of total denial, so much so that he even denied that he had ever known deceased Ramila.

4. The trial Court found that the accused appellant and Ramila were last seen together by her younger brother Ramesh, who asked them to go away from the factory premises when he saw that in the quarrel that took place, the appellant had given two slaps to Ramila. It was found that the death of Ramila was homicidal and had resulted because of strangulation. The medical evidence showed that her eyes and mouth were partially open, tongue had protruded fully, trachea was congested with depression at the level of the tracheal cartilage and frothy blood stained fluid were noticed. It was also found that her younger brother Ramesh Laxman had immediately disclosed the name of the accused as a suspect, since he had seen Shyamlal giving two slaps to Ramila late at night when they were seen together and were asked to go away from his place. The trial Court held that all the important circumstances pointing to the guilt of the accused were clearly established and therefore, convicted and sentenced him to life for the offence of murder under Section 302 of the IPC and also convicted him for the offence under Section 201 of the IPC without a separate sentence.

5. The learned Counsel appearing for the appellant contended that there was no direct evidence to connect the accused with the crime and the circumstantial evidence was not strong enough to bring home the guilt of the accused. He submitted that the prosecution witness

Ramesh Laxman had only suspected the involvement of the accused and such suspicion cannot take place of proof. It was also submitted that merely because the accused had reported at Mahidarpura Police Station on 1.9.1987, no adverse inference can be drawn against him. He also submitted that many of the prosecution witnesses have turned hostile and the overall appreciation of the evidence should go in favour of the accused, giving him benefit of doubt.

6. The learned Additional Public Prosecutor supported the judgement of the trial Court on all counts.

7. The appellant, as per the evidence on record, was a married person. The name of his wife was Saraswati. The deceased Ramila used to stay with him as a wife and was insisting that he should divorce his wife Saraswati. There used to be quarrels between them on this count. The prosecution witness Ramesh Laxman has deposed at Ex.9 that he was residing in a room in the factory premises and was working as a Watchman. There were three factories in the same compound and about 15 to 20 persons were working in these factories, which used to close after 5.00 P.M and thereafter, there used to be no one except him in these premises. He has stated that his sister Ramila was unmarried and that earlier she had gone away with one Chhanu. Thereafter, she had eloped with Shyamlal, the present accused. They were staying together though not legally wedded and they often used to come to his house as guests. Shyamlal used to ply a trolley. On the day of the incident, Shyamlal and Ramila had come to his house and after taking meals, they had gone out and thereafter, returned at 7.00 P.M. After having dinner, he and his wife went to sleep around 9'0 Clock in the room, while Ramila and Shyamlal slept outside the room in the open. Thereafter, he had heard their exchanges and commotion and saw that Shyamlal gave two slaps to her sister. He therefore told them not to quarrel since it was factory premises and asked them to go away. Thereafter, they went away. It was around 10 11P.M at that time. He has then deposed that thereafter, on Tuesday i.e. 1.9.1997, he had gone on the terrace to clean the tanks. When he was climbing the stairs, he noticed the foul smell and on looking at the surroundings, he found his sister's dead-body lying in one of the smaller tanks. There was some water in that tank. He had then gone and informed Dahyabhai at Bilimora, but Dahyabhai told him that he was going for his job and could not accompany him. Thereafter, he had gone to his employer Bharatbhai, who came to the factory. Sarpanch Bhikubhai also came there and advised this

witness to go to the Police Station and at the Police Station he gave the F.I.R Ex.10. In the cross-examination, he has maintained his version and stated that he had given the name of Shyamlal as an accused because he had suspected him because of what had happened between him and Ramila were at his place on the day of the incident. He has stated that as a Watchman, he would know if anyone enters the premises. He has denied the suggestion that after he had driven them out, the appellant Shyamlal had returned and told his wife that Ramila was not washing clothes and therefore, he should be returned his clothes and he had thereafter gone away and that Ramila had thereafter slept outside on the 'otla'. The prosecution witness Ramesh had thus, seen the accused and Ramila together late around 11.00 P.M on 29.8.1987 and he had from close quarters seen the appellant giving slaps to his sister Ramila. This is a very important circumstance which has been established in his deposition. The evidence clearly shows that Ramila used to stay with the appellant and they off and on visited his house, and it was but natural for this witness to ask them to go away when they were quarreling and he saw that the appellant had given slaps to his sister. His version is fully corroborated by what was stated by him in the F.I.R at Ex.10. It is also established from his deposition that there used to be quarrels between the appellant and Ramila because Ramila was insisting that appellant should divorce his wife Saraswati.

8. The medical evidence shows that Ramila died due to asphyxia caused by strangulation. Dr. Dilip Dalal has deposed at Ex.24 that her death was due to strangulation. He has given the reasons for his finding. He has stated that the death had occurred about 72 hours prior to his performing the post-mortem examination. The post-mortem examination was done at about 4.00 P.M on 1.9.1987. He has deposed to the fact that the injuries which were described in column 20 of the post-mortem notes were antemortem, which could be caused by strangulation. He has denied the suggestion that there was any possibility of the deceased having committed suicide. This important medical evidence shows that Ramila had died about 72 hours prior to the post-mortem of her body, which places the commission of crime around the time after the prosecution witness Ramesh Laxman asked the accused appellant and Ramila to go away around 11.00 P.M when he saw him slapping Ramila on 29.8.1987.

The evidence of prosecution witnesses clearly shows that the dead-body of Ramila was taken out from one

of the smaller water tanks (at places described as "tub") from the terrace of the Bhruguraj Industries. The body was decomposed because of the time that had elapsed.

9. The Circle Inspector who has deposed at Ex.29 has stated that he had prepared the map Ex.30 This map shows that the place where Shyamlal and Ramila were sleeping, was about 35ft. away from the hut in which Ramesh Laxman and his wife slept. It shows that the stair-case for going to the terrace was about 53 ft. from the 'otla', where Shyamlal and Ramila were sleeping. Though apparently Ramila and Shyamlal on being asked by Ramesh to leave had gone away, it appears that since Ramila was beaten, she would not have liked to go with Shyamlal, and, from the fact that her dead-body was found in the tub, it appears that she had gone on the terrace to ward off Shyamlal. There is no possibility of her having gone away with Shyamlal and Shyamlal killing her elsewhere and bringing her dead-body back to the same premises for being put in the water tank. Ramila's younger brother Ramesh was a watchman in this factory and in the normal course of conduct, Shyamlal would not have brought the dead body back there nor could have taken it on the terrace for being dumped in the tub. The only event which could have occurred under these circumstances was that after being asked by Ramesh to go away, Ramila who was beaten by Shyamlal proceeded to the terrace of Bhruguraj Industries followed by Shyamlal, who having caused her death by strangulation, dumped her in the water tank and went away unnoticed at that time.

10. It is significant to note that even Sarpanch Bhikubhai who has deposed at Ex.11 had stated that he had seen the accused and Shyamlal fighting on the street in the past. The relationship between the accused Shyamlal and Ramila was widely known since she was openly staying with him. The accused has however, chosen to take up the defence of a flat denial even as regards his having known Ramila, which obviously is a false defence.

11. Bharatbhai, the employer of Ramesh has deposed at Ex.12 that Ramesh had disclosed before the Sarpanch Bhikubhai that he suspected Shyamlal as having murdered his sister. Ramesh who had seen Shyamlal and Ramila last together and had also seen that Shyamlal had given her slaps, had all the reason to suspect that it was Shyamlal who was responsible for her death. The disclosure of name of Shyamlal by the prosecution witness Ramesh as the person whom he suspected, soon after finding his sister's dead body on 1.9.1987 goes to support his version of Shyamlal giving slaps to Ramila when he saw them last and

asking them to go away from the factory premises on 29.8.1987.

12. P.S.I Munshi, Mahidarpura Police Station at Surat had proved the station diary entries Exs. 7 and 8 which bring out an important circumstance that on 1.9.1987 Shyamlal reported to Mahidarpura Police Station at Surat around 12.30 P.M., as a result of which the PSI of Mahidarpura Police Station made an enquiry from Bilimora and on enquiry he came to know that there was a criminal case registered there against the accused for the offences under Sections 302 and 201 of the I.P.C on that day. On this information being received, the accused came to be arrested at 1.15 P.M at Mahidarpura Police Station at Surat. If the accused was not concerned with the crime, there was no reason for him to report as he did to Mahidarpura Police Station at Surat when the F.I.R was lodged just around 10'0 Clock on 1.9.1987 at Bilimora Police Station.

13. The evidence adduced by the prosecution thus, establishes the following important chain of circumstances:-

- (i) The appellant - accused presented himself at Mahidarpura Police Station at Surat around 12.30P.M on 1.9.1987, after the F.I.R was lodged at Bilimora Police Station on that day at 10.00 A.M and was arrested at Mahidarpura Police Station after it was known on enquiry from Bilimora Police Station that the said crime was registered against the accused;
- (ii) The appellant - accused was last seen together with Ramila upto about 11.00 P.M on 29.8.1987 by the prosecution witness Ramesh Laxman near his room within the factory compound;
- (iii) The appellant - accused was seen as having given slaps to Ramila when they were last seen together by the prosecution witness Ramesh, who therefore, asked them to leave the compound;
- (iv) The decomposed dead-body of Ramila was found from a water tank on 1.9.1987 in the morning by her brother Ramesh, who had gone to clean the water tank on the terrace of the factory, at a place a very near to the place where they were last seen together by the prosecution witness Ramesh;
- (v) The medical evidence shows that the death of

Ramila was homicidal caused by strangulation about 72 hours prior to the time when the post-mortem was conducted at 4.00 P.M on 1.9.1987, which placed the time of the actual incident soon after the appellant accused and Ramila were last seen together on 29.8.1987 by her brother Ramesh;

(vi) The circumstance that soon after the body of Ramila was found by her brother Ramesh on 1.9.1987, he had disclosed the name of the appellant as the suspect, in view of the fact that he had last seen them together when he had seen the accused appellant giving slaps to his sister Ramila;

14. The aforesaid circumstantial evidence clearly establishes the guilt of the accused without any shadow of doubt. From these circumstances coupled with the evidence of prosecution witnesses who have supported the prosecution version, it is amply clear that it is the appellant accused alone who had committed the crime with which he has been charged and of which he has been found guilty. We fully agree with the reasoning adopted by the trial Court for reaching its conclusions and find no warrant whatsoever for interfering with its decision. The appeal is therefore, dismissed.

*/Mohandas